

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 469 of 1993

in

SPECIAL CIVIL APPLICATION No 3338 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
5. Whether it is to be circulated to the Civil Judge? : YES

CHANDRAKANT M DAVE

Versus

STATE OF GUJARAT

Appearance:

MR CC TRIVEDI for Appellant

MR KG SHETH, AGP for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 28/09/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause-15 of the Letters Patent, is directed against judgment dated October 12, 1993 rendered by the learned Single Judge in Special Civil Application No. 3338/93, by which prayers made by the appellant to direct the respondent to consider his case for promotion to the post of Office Superintendent with effect from April 12, 1993 and quash notice dated April 5, 1993 calling upon him to show cause as to why departmental inquiry should not be initiated against him, are rejected.

2. The petitioner was working as an Assistant Superintendent (Circle) in Ahmedabad Water Resources Department, Ahmedabad. According to him, he was entitled to be promoted to the post of Office Superintendent with effect from April 12, 1993, but he was denied promotion by the respondent. According to the respondent, the appellant had committed breach of Rules 3(1)(1) & 3(1)(2) of the Gujarat Civil Services Rules, 1971 and, therefore, a notice dated April 5, 1993 was served on the appellant calling upon him to show cause as to why action should not be taken against him. The case of the appellant was that he should have been promoted to the post of Office Superintendent if otherwise he was found fit ignoring the fact that any departmental inquiry was contemplated against him and the respondent should have resorted to well-known procedure of sealed cover. Under the circumstances, the appellant instituted Special Civil Application No.3338/93 and prayed the Court to issue a writ of mandamus or any other appropriate writ or order directing the respondent to consider his case for promotion to the post of Office Superintendent with effect from April 12, 1993 if otherwise he was found fit ignoring the fact that any departmental inquiry was contemplated against him. It was also prayed to direct the respondent to open the sealed cover if at all sealed cover procedure was followed and declare that the respondent was not entitled to withhold promotion on the ground of contemplated inquiry. During the course of hearing of the petition, petition was permitted to be amended and the petitioner had also claimed relief to quash and set aside notice dated April 5, 1993 by which he was called upon to offer explanation as to why departmental inquiry should not be initiated against him.

3. The learned Single Judge after hearing the learned Counsel for the parties dismissed the petition by judgment dated October 12, 1993, giving rise to present appeal.

4. At the time of hearing of the appeal, learned Counsel for the appellant has produced a xerox copy of order dated April 6, 1994 passed by the competent authority of Narmada and Water Resources Department, Sachivalaya, Gandhinagar stating that the inquiry which was contemplated against the appellant is dropped. The xerox copy of the said order is taken on the record of the case. Learned Counsel for the appellant has further stated at the bar that during the pendency of the appeal, the appellant retired from service and was thereafter given promotion with deemed date. As the appellant is promoted with retrospective effect and as departmental inquiry against him is dropped, we are of the opinion that the appeal has become infructuous and deserves to be disposed of accordingly.

5. Learned Counsel for the appellant vehemently submitted that though no good grounds existed, the appellant was denied promotion as well as departmental inquiry was contemplated and, therefore, respondent should be directed to pay costs to the appellant, as the appellant has undergone mental stress, agony and costs of the litigation.

6. It may be stated that claim which was advanced by the appellant in the petition was not accepted by the learned Single Judge while disposing of the petition which was filed by the appellant. The order dated April 6, 1994 makes it more than clear that the explanation offered by the appellant was found to be plausible as well as acceptable, as a result of which it was decided by the competent authority to drop the departmental inquiry. Promotion was probably denied to the appellant only because a departmental inquiry was in contemplation against the appellant, but as soon as decision to drop departmental inquiry was taken, the appellant was promoted to the concerned post with retrospective effect. Under the circumstances, we are of the opinion that this is not a fit case to direct the respondent to pay costs to the appellant.

For the foregoing reasons, the appeal is disposed of as having become infructuous, with no order as to costs.

(patel)